

Prob12B (10/99)

UNITED STATES DISTRICT COURT
for the
Western District of Oklahoma

Request for Modifying the Conditions or Term of Supervision
with Consent of the Offender

Probation Form 49, Waiver of Hearing is Attached

Name of Offender: David McLain

Case Number: M-13-299-P

Name of Judicial Officer: The Honorable Gary Purcell (Jurisdiction was accepted in the Western District of Oklahoma from U.S. Magistrate Judge Jeffrey C. Manskey in the Western District of Texas on June 7, 2013.)

Date of Original Sentence: December 21, 2012

Original Offense: Simple Possession (Spice); 21 U.S.C. § 844

Original Sentence: 12 months probation

Type of Supervision: Probation

Date Supervision Commenced: December 21, 2012

Previous Court Action: None

PETITIONING THE COURT

[] To extend the term of supervision for years, for a total of years.

[X] To modify the conditions of supervision as follows:

The defendant shall be placed in the Remote Location Monitoring Program for a period of 90 days. During this time, you shall remain at your place of residence except for employment and other activities approved in advance by the probation officer. At the direction of your probation officer, you shall wear a location verification device and follow monitoring procedures specified by your probation officer. You shall promptly pay the associated monitoring fees directly to the monitoring company for each day you are in the Remote Location Monitoring Program as determined per the Home Confinement Policy Manual co-payment guidelines.

CAUSE

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	<p><u>Violation of Mandatory Condition No. 3:</u> The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release on probation or supervised release and at least two periodic drug test thereafter (as determined by the court) for use of a controlled substance, but the condition stated in this paragraph may be ameliorated or suspended by the court if the defendant's presentence report or other reliable sentencing information indicates low risk of future substance abuse by the defendant.</p> <p>On February 2, 2013, and May 28, 2013, Mr. McLain submitted urine specimens that tested positive for the use of marijuana. Furthermore, on May 28, 2013, Mr. McLain admitted to U.S. Probation Officer Celestine that he used marijuana approximately 3 weeks prior.</p>
2	<p><u>Violation of Mandatory Condition No. 9:</u> If the judgment imposes a fine or restitution, it is a condition of supervision that the defendant pay in accordance with the Schedule of Payments sheet of the judgment.</p> <p>Mr. McLain violated this condition of probation by failing to make (12) equal monthly installments. He has yet to make any payment towards his fine.</p>
3	<p><u>Violation of Standard Condition No. 1:</u> The defendant shall not leave the judicial district without permission of the court or probation officer.</p> <p>On May 28, 2013, Mr. McLain admitted to U.S. Probation Officer Celestine that he had traveled to Wichita, Kansas, sometime in the beginning of March 2013, to the Veterans Affairs Hospital to receive some prescription refills. Mr. McLain did not have prior permission to travel outside the judicial district.</p>
4	<p><u>Violation of Standard Condition No. 2:</u> The defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer.</p> <p>Mr. McLain failed to submit monthly reports to the U.S. Probation office for months of February, March and April 2013.</p>

- 5 **Violation of Standard Condition No. 6: The defendant shall notify the probation officer at least ten days prior to any change in residence or employment.**

On March 26, 2013, U.S. Probation Officer Celestine was advised by Mr. McLain's grandmother that he had moved from Marland, Oklahoma, to Ponca City, Oklahoma. Mr. McLain did not notify this officer of the change of residence.

- 6 **Violation of Standard Condition No. 7: The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substances or any paraphernalia related to any controlled substances, except as prescribed by a physician.**

On February 2, 2013, and May 28, 2013, Mr. McLain submitted urine specimens that tested positive for the use of marijuana. Furthermore, on May 28, 2013, Mr. McLain admitted to U.S. Probation Officer Celestine that he used marijuana approximately 3 weeks prior.

- 7 **Violation of Standard Condition No. 15: The defendant shall submit to an evaluation for substance abuse or dependency treatment as directed by the probation officer, and if deemed necessary by the probation officer, the defendant shall participate in a program approved by the probation officer for treatment of narcotic addiction or drug or alcohol dependency which may include testing and examination to determine if the defendant has reverted to the use of drugs or alcohol. During treatment, the defendant shall abstain from the use of alcohol and all intoxicants. The defendant may be required to contribute to the cost of the services rendered (copayment) in an amount to be determined by the probation officer, based upon the defendant's ability to pay.**

Mr. McLain failed to submit to urine testing on February 18 and 27, March 12 and 26, April 3 and 30, May 13 and 22, 2013. Mr. McLain also failed to complete a substance abuse assessment as directed.

JUSTIFICATION

Mr. McLain has been on probation since December 12, 2012. Since the commencement of his supervision Mr. McLain has been non-compliant. He recently became employed and is consistently taking his medication for post-traumatic stress disorder, depression and anxiety disorder. Mr. McLain has begun submitting drug test as directed and he has an appointment to complete a substance abuse assessment. It is recommended that in lieu of a revocation hearing, Mr. McLain be placed in location monitoring program.

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Respectfully submitted by,

Erika K. Celestine

Erika K. Celestine
U.S. Probation Officer

Date: June 18, 2013

Reviewed by,

Loraine M. Liggins

Loraine M. Liggins
Supervisory U. S. Probation Officer

Date: June 18, 2013

THE COURT ORDERS:

- ☐ No Action
☐ The Extension of Supervision as Noted Above
☒ The Modification of Conditions as Noted Above
☐ Other

Date

6/20/13

Signature of Judicial Officer

[Signature]